

**State of Wisconsin  
Department of Natural Resources  
June 2018**

**Responses to Public Comments on Wisconsin Pollutant Discharge Elimination System (WPDES)  
General Permit for Transportation Separate Storm Sewer System**

**General Permit to discharge storm water to waters of the state from the Transportation Separate Storm Sewer System (TS4) that is owned, operated, and maintained by the Wisconsin Department of Transportation (DOT), WPDES General Permit No. WI-S066800-1 (“general permit”)**

On May 4, 2018, the Wisconsin Department of Natural Resources (Department) public noticed the proposed WPDES TS4 general permit named above. On May 24, 2018, the Department held a public hearing on the proposed general permit. The comment period closed on June 4, 2018. The Department did not receive any public comments at the hearing or during the public comment period.

**U.S. Environmental Protection Agency (USEPA) Comments**

By email and an accompanying letter dated May 31, 2018 (attached), the USEPA stated that it would not object to issuance of the general permit but requested that the Department consider and address the comments below as they relate to the MS4 Remand Rule to improve the general permit.

USEPA Comment 1: Section 1.4 and 1.5 (Outstanding and Exceptional Resource Waters, Impaired Water Bodies and Total Maximum Daily Load Waterbodies): These sections lack clear, specific, and measurable requirements, since it appears that these programs will be established by the permittee, EAP recommends including language in this section that triggers a second permitting step/process if there is such a discharge to these types of waterbodies like as is required for section 2.6 (Pollution Prevention).

Response: The “clear, specific, and measurable goals” concept is most practical when applied to the six minimum control measures, particularly for this initial issuance of a storm water discharge permit for the TS4. Section 1.4 of the general permit relates to antidegradation under ch. NR 207, Wis. Adm. Code. Since the Department has initiated the administrative rule-making process to update and amend ch. NR 207, the Department would prefer allowing that process to run its course for developing any new policy rather than adding language to the general permit prematurely. Furthermore, for the purposes of this initial general permit issuance, the requirements for amending the storm water management program in section 1.5.2, and for using the percent reduction for a pollutant of concern in section 1.5.4 are clear, specific, and measurable goals.

USEPA Comment 2: Section 1.9 (General Stormwater Discharge Limitations): The use of the phrase “in amounts that have an unreasonable effect on receiving water quality...” is not clear, specific, and measurable. EPA recommends removing this language and listing out the substances in section 1.9.1 thru 1.9.6.

Response: The purpose of section 1.9 is to reflect general, qualitative, and narrative-type limitations for discharges to surface waters. However, the language in the public noticed version of the general permit is inconsistent with what the Department currently includes in WPDES permits pursuant to s. NR 102.04(1), Wis. Adm. Code. Consequently, section 1.9 has been amended to be consistent with this code language.

USEPA Comment 3: Section 2 (Permit Conditions): It may be unnecessary to include the “clear, specific, and measurable” descriptor in Section 2. The requirement is that the provisions of the permit must be clear, specific, and measurable, but using this language in a broad sense does not make all of the requirements that follow meet this requirement. EPA recommends deleting this language.

Response: The Department has removed the language “clear, specific, and” throughout section 2 of the general permit, leaving text as “measurable goals.”

USEPA Comment 4: Section 2.3 (Illicit Discharge Detection and Elimination): The requirements for dry weather screening are limited to major outfalls that have not previously been screened or mapped, and the requirements for re-screening are limited to screening 2% of all high risk major outfalls per year (which are those outfalls adjacent to industrial facilities or active construction sites.) Narrowing the scope of the outfalls to be screened appears to be inconsistent with the requirement to conduct field screening, as it is unknown what could be at each individual outfall until that outfall has been visually screened. Additionally, this approach could take 50 years to inspect 100% of the outfalls. EPA recommends evaluating the total number of outfalls and increasing the screening rate for all outfalls.

Response: Past screening activities performed by DOT to observe dry-weather flows that originate within the TS4 have shown that such discharges are extremely rare, and where they do occur, are typically uncontaminated groundwater discharges or baseflow. Therefore, it is neither practical nor cost-effective to screen the total number of outfalls, so for this first 5-year permit term, the general permit focuses the screening just on the previously unscreened major outfalls. However, in response to this recommendation, for re-screening high risk major outfalls the frequency has been changed to 10% to ensure re-screening of 50% of these outfalls during the 5-year permit term.

USEPA Comment 5: Section 2.4.1 (Construction Site Pollutant Control): EPA recommends clarifying that WIS066796 General Permit is applicable to sites one acre or greater.

Response: This clarification has been made to section 2.4.1.

USEPA Comment 6: Section 2.4.3.3.2: EPA recommends adding in a specific timeline rather than relying on the more ambiguous “at the earliest possible date.”

Response: Section NR 216.44(1), Wis. Adm. Code, only requires a 14-working day lead time for submitting a Notice of Intent to the Department before commencing land disturbing construction activities. The consultative process for preliminary plans in section 2.4.3.3.2 of the general permit typically occurs several months and sometime years prior to the legal deadline for submitting a Notice of Intent and the actual construction start date. Given the timeframes and that this consultative process is iterative and can vary in complexity and scope depending upon the project, the current language is appropriate.

USEPA Comment 7: Section 2.6.1.1. (Pollution Prevention): The General Permit uses the language “to the maximum extent practicable”. This language is not clear, specific, and measurable. EPA recommends removing the maximum extent practicable language and instead include more specific language, similar to the definition included in section 5.7.

Response: Where the phrase “maximum extent practicable” has been used in the general permit (sections 1.11.1, 2.6.1.1, and 2.6.2), a reference to the definition in section 5.7 has been added.

## **Public Comments**

The Department did not receive any written comments from the public.

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